

APPEAL NO. 040092  
FILED MARCH 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 032049, decided September 17, 2003. We had remanded the case to reconstruct the record because there was no record. A contested case hearing on remand was held on December 12, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury, including a compensable right wrist injury that arose out of and in the course and scope of employment with the employer on \_\_\_\_\_, or any other date; that the claimant did not sustain a compensable injury, including a compensable right wrist injury in the form of an occupational disease, due to repetitious traumatic activities that arose out of and in the course and scope of employment with the employer on \_\_\_\_\_, or any other date; that the claimant did not have disability beginning on April 1, 2003, and continuing through the present date of this hearing on June 27, 2003, or for any other time period; that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to Section 409.001 of his claimed injury of \_\_\_\_\_, or any other date; that the claimant did not have good cause for failing to timely report his claimed injury of \_\_\_\_\_, or any other date; and that the carrier did not waive its right to contest compensability of the claimant's injury because the carrier timely contested the claimant's claimed injury in accordance with Sections 409.021 and 409.022. The claimant appeals on factual sufficiency grounds and urges reversal. The carrier responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

All of the disputed issues in the present case-injury, timely report of injury, carrier waiver, and disability-turned upon factual determinations. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the

credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to overturn the hearing officer's factual determinations. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Since, in the present case, the hearing officer's legal conclusions turned upon his factual determinations and the claimant's appeal was based on attacking these determinations as not being supported the evidence, we find no legal basis to overturn the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

---

Gary L. Kilgore  
Appeals Judge

CONCUR:

---

Margaret L. Turner  
Appeals Judge

---

Edward Vilano  
Appeals Judge